To: All Tribunal Members

Cc: Tribunal Clerks

Warnings guidance

Circular 5/15, issued in March 2015 addressed the subject of Warnings. As a number of changes have occurred since that circular was issued we wish to provide some updated clarification.

Legislation and guidance

S35D(3) Medical Act 1983 provides:

‘Where the Tribunal find that the person’s fitness to practise is not impaired they may nevertheless give him a warning regarding his future conduct or performance.’

Rule 17(2) of the Fitness to Practise rules provides:

’(l) the Medical Practitioners Tribunal shall consider and announce its findings on the question of whether the fitness to practise of the practitioner is impaired, and shall give its reasons for that decision.’

’(m) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to the appropriate sanction, if any, to be imposed or, where the practitioner’s fitness to practise is not found to be impaired, the question of whether a warning should be imposed.’

Sanctions Guidance for medical practitioners tribunals (February 2018) provides:

‘61. Where a tribunal finds a doctor’s fitness to practice is not impaired, it cannot impose a sanction. However, it must consider, under rule 17(2)(m) whether to:

a) take no action

b) issue a warning if the doctor’s conduct, behaviour or performance has
significantly departed from the guidance in Good medical practice.

*Guidance on Warnings (February 2018) provides:*

‘13 ...warnings...should [nonetheless] be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practice.’

‘14 Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell **significantly** below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.’

‘16 A warning will be appropriate if there is evidence to suggest that the practitioner’s behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or MPTS tribunal. A warning will therefore be appropriate in the following circumstances:

- There has been a **significant** departure from Good medical practice; or
- There is a **significant** cause for concern following an assessment of the doctor’s performance.’

No definition of ‘significant’ is contained within the legislation but factors to consider are set out within the guidance.

**Submissions on warnings**

Warnings are likely to only be appropriate where the tribunal has made findings of fact from which the tribunal can conclude that the Doctor’s conduct, behaviour or performance has fallen significantly below the standard expected of members of the profession.

**Facts not found proved**

Where a tribunal does not make any findings of fact from which the tribunal can conclude that the Doctor’s conduct, behaviour or performance has fallen significantly below the standard expected of members of the profession, it is difficult to see how the test for the issue of a warning could be made out. In such cases, the tribunal does not need to go on and invite submissions from the parties.

**Facts found proved, no misconduct/ deficient professional performance**

Where a tribunal finds that the Doctor’s conduct, behaviour or performance has fallen significantly below the standard expected of members of the profession but that, for
whatever reason, it is not sufficient to amount to misconduct, serious misconduct or deficient professional performance, the tribunal must also conclude that there is no impairment.

In these cases the tribunal should carefully consider whether the factors that indicate a warning may be appropriate are present, and if so, they should then invite submissions.

*Misconduct/ deficient professional performance found, not impaired*

Where a tribunal finds misconduct (as defined by the Medical Act 1983 and relevant case law) or deficient professional performance the tribunal should be clear on whether this amounts to a significant departure from the guidance in *Good medical practice*.

In these cases the presumption should be that submissions from the parties are sought under rule 17(2)(m). When inviting submissions, it is likely to assist the parties if the tribunal makes clear their findings on whether the departure has been ‘significant’ so that submissions are proportionate.

The tribunal should, at all times, be mindful of the over-arching objective and the purpose of warnings.

Kind regards

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